

### **REMARKS**

In the Office Action, the Office acknowledged that Applicants' elected species, SEQ ID NO: 35, is free of prior art. The species has been extended to include SEQ ID NOs: 36-66. The Office also acknowledged Applicants' species election of an antibody or fragment thereof.

The Office objected to claims 1, 2, 13, 24-33, 35, 36, 38, and 75-85 for allegedly being improper or being dependent on an objected base claim. Claim 12 was rejected under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite. This was the only *rejection* remaining in the case. Reconsideration of the claim objections and rejection is respectfully requested in view of the amendments and remarks set forth herein. Applicants acknowledge with thanks the consideration extended by Examiner Huynh to Applicants' representative, Heather R. Kissling, during the telephonic interview on May 28, 2009, during which the Section 112, second paragraph, rejection was discussed.

Claims 1, 2, 12, 13, and 77-100 are pending. Claims 1, 77, 78, 80-82, 84, and 85 have been amended in a manner consistent with the Office's suggestions at pages 2-4 of the Office Action. The amendments are supported by the specification at, e.g., page 14, line 31, through page 15, line 1.

In paragraph 7 of the Action, the Examiner objected to the language of claim 1. No explanation was provided as to why the claim was objectionable, but the words "with ... and" were italicized. The Examiner suggested alternative wording that eliminates the sentence structure that the Examiner finds objectionable, but the proposed wording itself is grammatically imperfect ("wherein the peptide comprising"). Moreover, it is more appropriate to use the word "length" as a descriptor of a property of the peptide than it is to say that the peptide "consists of" a length. Applicants believe that claim 1 as amended addresses the Examiner's concerns because the "with ... and" language has been deleted and the word "length" has been introduced. Applicants have amended claims 78 and 82 in a similar fashion to render moot the Examiner's similar objections to these claims (in paragraphs 11 and 14 of the Action). Applicants invite the Examiner to telephone the undersigned attorney if further minor revisions are thought to be in order to further improve the claim.

In paragraph 8 of the Action, the Examiner objected to “the form” of claims 24, 26, 27, 30, 32, 33, 35, 38, and 76, alleging that they should depend from preceding claims only. Whereas an Examiner is permitted to renumber the claims when ready for allowance, Applicants are not. (See 37 C.F.R. § 1.126.) However, to assist the Examiner with this task, Applicants have canceled the allegedly objectionable claims and re-introduced new claims with a numbering that will be preferred by the Examiner. Specifically, claims 24-33, 35, 36, 38, 75, and 76 have been cancelled and reintroduced as claims 86-100.

Claims 1, 2, 12, 13, 77-93 and 95-100 read on the elected species. No new matter has been added by way of the amendments set forth herein, which render moot the claim objections set forth on pages 2 and 3 of the Office Action.

Claim 12 was rejected under Section 112, second paragraph, for allegedly being indefinite for lacking antecedent basis. Applicants respectfully disagree with the Office’s assertion. One of ordinary skill would have no difficulty ascertaining the scope of claim 12 and, as such, the claim is not indefinite. M.P.E.P. § 2173.05(e). However, solely in an effort to advance prosecution of the instant application, claim 1 has been amended to recite that the isolated peptide is 6-40 amino acids in length, which is consistent with the Office’s suggestion at page 4 of the Office Action.

The application is considered to be in proper form for allowance. Accordingly, Applicants respectfully request consideration of claim 94 (previously claim 31), which depends from allowable generic claim 93, as provided in 37 C.F.R. § 1.141. If the Examiner believes that a telephone conversation would expedite allowance of the claims, the Examiner is invited to contact the undersigned attorney at the number below.

Dated: June 22, 2009

Respectfully submitted,

By   
Heather R. Kissling

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